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ORGANIC FOOD BAR, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

PREMIER NUTRITION, INC., a
California corporation,

Plaintiff,

vs.

ORGANIC FOOD BAR, INC., a
California corporation,

Defendant.

ORGANIC FOOD BAR, INC., a
California corporation,
Counterclaimant,

v.

PREMIER NUTRITION, INC., a
California corporation,
Counterclaim-Defendant.

CASE NO. SACV06-827 AG (RNBx)

Hon. Andrew J. Guilford

**ORGANIC FOOD BAR, INC.'S
OBJECTIONS TO PREMIER
NUTRITION'S BILL OF COSTS
PURSUANT TO L.R. 54-7.**

Date: May 2, 2008
Time: 10:00 a.m.
Place: Room 1-053
(Santa Ana Courthouse)

1 Defendant and Counter-claim Plaintiff Organic Food Bar Inc. hereby objects to
 2 Premier Nutrition Inc.'s Bill of Costs set forth in its Application to the Clerk to
 3 Tax Costs.

4 The following items on the "Summary of Premier's Proposed Bill of Costs"
 5 annexed to the Declaration of Kamran Fattahi are hereby objected to:
 6

7 **Bill of Cost Item Nos. 4, 5 and 8:** Pursuant to Local Rule 54-4.6, costs are
 8 taxable only "in connection with taking oral depositions." L.R. 54-4.6 (emphasis
 9 added). Because the depositions relating to Item Nos. 4, 5 and 8 were taken by
 10 Organic Food Bar and not Premier Nutrition, Premier Nutrition is not entitled to
 11 those costs. Furthermore, Premier Nutrition's inclusion of costs for the deposition
 12 of David Sinegal in Item No. 5 was previously paid to Premier Nutrition by
 13 Organic Food Bar pursuant to the Court's May 9, 2007 Minute Order granting Fees
 14 and Costs relating to the deposition of David Sinegal. *See* Dkt. No. 55.

15 Therefore, Premier Nutrition is not entitled to its claimed costs for Item Nos.
 16 4, 5 and 8 and its claimed costs must be reduced by \$1372.90.
 17

18 **Bill of Cost Item Nos. 16-28:** Item Nos. 16-28 represent copying costs.
 19 Premier Nutrition, however, has not produced any receipts to show its actual costs
 20 for these copies nor a sworn declaration identifying what, if anything, Premier
 21 Nutrition actually paid. As there is absolutely no evidentiary basis to support its
 22 claim for Item Nos. 16-28, Premier Nutrition has not met its burden of proof and
 23 should not recover any of its claimed copying costs of \$780.40.

24 Furthermore, even if Premier Nutrition's undocumented copying were
 25 considered, the cost per page for Premier Nutrition's copies is arbitrary,
 26 unsubstantiated and unreasonably high. Premier Nutrition claims, without support,
 27 costs of \$0.20 per page. In contrast, the rate paid by Organic Food Bar for copies
 28 in this case was \$0.12 per page. See the receipt for Plaza Copying and Imaging

1 annexed hereto as Exhibit 1.¹ Thus, if Premier Nutrition were to recover its
2 copying costs, it should not recover more than the amount paid by Organic Food
3 Bar as established in the Exhibit 1 receipt as follows:

4 **Item No. 16:** The cost for the 564 (141 x 4 sets) copies in Item No.
5 16 must be reduced by \$45.12;

6 **Item No. 17:** The costs for the 40 (10 x 4 sets) copies in Item No. 17
7 must be reduced by \$3.20;

8 **Item No. 19:** The costs for the 84 (21 x 4 sets) copies in Item No. 19
9 must be reduced by \$6.72;

10 **Item No. 20:** The costs for the 208 (52 x 4 sets) copies in Item No.
11 20 must be reduced by \$16.64;

12 **Item No. 21:** The costs for the 196 (74 x 4 sets) copies in Item No.
13 21 must be reduced by \$23.68;

14 **Item No. 22:** The costs for the 532 (133 x 4 sets) copies in Item No.
15 22 must be reduced by \$42.56;

16 **Item No. 23:** The costs for the 8 (2 x 4 sets) copies in Item No. 23
17 must be reduced by \$0.64;

18 **Item No. 24:** The costs for the 48 (12 x 4 sets) copies in Item No. 24
19 must be reduced by \$3.84;

20 **Item No. 25:** The costs for the 1360 (340 x 4 sets) copies in Item No.
21 25 must be reduced by \$108.80;

22 **Item No. 26:** The costs for the 228 (57 x 4 sets) copies in Item No.
23 26 must be reduced by \$18.24;

24 **Item No. 27:** The costs for the 60 (15 x 4 sets) copies in Item No. 27
25 must be reduced by \$4.80;

26
27 ¹ The Plaza Copy & Imaging receipt shows 618 copies for a total of \$74.16, which is \$0.12 per
28 copy. The undersigned hereby declares under penalty of perjury that Exhibit 1 is a true and
correct copy of a Plaza Copy & Imaging receipt for copy services used by Organic Food Bar in
this action.

1 **Item No. 28:** The costs for the 24 (6 x 4 sets) copies in Item No. 28
2 must be reduced by \$1.92.

3 Therefore, Premier Nutrition should not recover for Item Nos. 16-28 or, at a
4 minimum, Premier Nutrition's recovery should be reduced by \$276.16 as \$0.12 per
5 page is the only established copying cost in this case.

6
7 **CONCLUSION**

8 For the foregoing reasons, Premier Nutrition should recover no more than
9 \$3,327.10.²

10
11 DATED: April 25, 2008

STRADLING YOCCA CARLSON & RAUTH

12
13 By: /s/
14 Jan Weir
15 Attorneys for Plaintiff B-K Lighting, Inc.
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28 ² If Premier Nutrition's unsubstantiated copying claims were permitted, then it should still
recover no more than \$3,831.34.

EXHIBIT 1

PLAZA COPY & IMAGING**INVOICE**

Mail Payments to:

Finance Department
1701 S. Mays, Suite J-198
Round Rock, TX 78664
877/876-7706
Tax ID 57-1137877

611 Anton Blvd. Suite 130
Costa Mesa, CA 92626
714/556-2679 Costa Mesa

5 Park Plaza Suite 180
Irvine, CA 92614
949/955-2679

DATE	INVOICE #
9/25/2007	X239372

BILL TO:

Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive
Suite 1600
Newport Beach, CA 92660

RECEIVED**SEP 25 2007**

Stradling Yocca Carlson & Rauth

Rep	Terms	CLIENT'S REF. NO.	CLIENT CONTACT
RK	Net 30	DFB.	

DESCRIPTION	QTY	AMOUNT
***** 3 SETS ***** Collate copies as originals Litigation Copies	618	74.16T
Received By: _____		Total

TERMS: This invoice is due and payable within 30 days of the invoice date and considered past due after 30 days. 18% per annum or minimum of \$10 will be charged on all overdue accounts. Your signature above is an agreement that the above described work has been authorized and received. In any action, proceeding or arbitration arising from the collection of monies due relative to this invoice, Plaza Copy & Imaging shall be entitled to reasonable attorney's fees and costs incurred.

REDACTED**EXH 1 PAGE 1**

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Stradling Yocca Carlson & Rauth, 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660-6422.

On **April 25, 2008**, I served the within documents:

**ORGANIC FOOD BAR, INC.'S OBJECTIONS TO PREMIER
NUTRITION'S BILL OF COSTS PURSUANT TO L.R. 54-7**

[☒] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below.

[☒] by electronic mail in pdf format addressed as set forth below.

Kamran Fattahi, Esq.
LAW OFFICES OF KAMRAN FATTAHI
15303 Ventura Boulevard, Suite 1400
Sherman Oaks, California 91403
(818) 205-0140 FAX (818) 205-0145
E-mail: kamran@fattahilaw.com
Attorneys for **Premier Nutrition, Inc.**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 25, 2008**, at Newport Beach, California.


Bethany A. Miles